



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,632	07/25/2005	Mikael Hillforth	36211	6374
23589	7590	01/22/2009		
HOVEY WILLIAMS LLP				
10801 Mastin Blvd., Suite 1000				
Overland Park, KS 66210				
EXAMINER				
VALENTI, ANDREA M				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
01/22/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/537,632

**Applicant(s)**

HILLFORTH, MIKAEL

**Examiner**

ANDREA M. VALENTI

**Art Unit**

3643

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-10, 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,673,647 to Pratt in view of European Patent EP 0561071 to Frey et al.

Regarding Claim 1, Pratt teaches an apparatus for detecting an animal having a body part and a head part (Pratt abstract, cattle), comprising: an animal passage extending in a transport direction, said passage being defined by a first enclosure member and a second enclosure member (Pratt Fig. 11A), which members are arranged on a respective side of the passage and extend substantially in parallel to said transport direction, and a sensor device which is arranged to sense the animal in the passage (Pratt Fig. 20A and 20B and Col.33 line 48-67), characterized in that wherein the sensor device is arranged to sense a parameter regarding measurements (Pratt Col. 6 line 38, line 62) at a determined position in the passage.

Pratt teaches measuring dimensions of each animal via a sensor arranged at a determined position in the passage and the sensor device is arranged to produce a signal when the parameter indicates that the width of the animal is less than a predetermined value at the predetermined position (Pratt Col. 7 line 30-35 teaches that

based on the size of the animal it is categorized and ends up in different pens so the signal produced by the sensor device is that the animal ends up in a particular pen; Col.44 line 40, applicant has not claimed the condition or what type of signal and Pratt teaches a visual signal by sorting into various lots based on where the animal falls in relation to a predetermined parameter e.g. weight, size, ownership, etc).

Pratt is silent on explicitly teaching that the parameter is related to the width of the animal and the apparatus comprises a control member connected to the sensor device the control member being arranged to count the animals passing the animal passage in response to the sensing of the sensor device. However, Frey teaches that sensor devices arranged in a passage and arranged to sense a dimension parameter seen in a determined direction and to produce a signal when the parameter indicates that the dimension is less than a predetermined value is old and notoriously well-known. Frey teaches it is notoriously well-known to utilize a control member connected to the sensor device, the control member being arranged to count in response to the sensing of the sensor device. (Frey abstract and page 2 line 11, 51; page 4 line 26 and Fig.8). It would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt with the teachings of Frey at the time of the invention as a management measure to obtain accurate information relating to the flow as taught by Frey (Frey page 4 line 13-14). The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results. Although Frey teaches measuring the height it would have been obvious to one of ordinary skill in the art to further modify the teachings at the time of the invention by measuring width since it is

"obvious to try" choosing from a finite number of identified, predictable solutions with a reasonable" expectation of success.

Regarding Claim 7, Pratt as modified teaches the sensor device comprises at least a first sensor and a second sensor, wherein the first sensor is arranged to sense the presence of the animal at a first point of the passage and wherein the second sensor is arranged to sense the presence of the animal at a second point of the passage (Pratt Fig. 11A #384, 386, 388).

Regarding Claim 9, Pratt as modified teaches the first point is located in the proximity of the first enclosure member whereas the second point is located in the proximity of the second enclosure member (Pratt Fig. 11A and 12A; Kalscheur Fig. 1 #104, 106).

Regarding Claims 13, 14, 15 and 16-20, Pratt as modified teaches a gate device (Pratt Fig. 2 and Fig. 5) arranged in the passage to take one of an open position and a closed position.

Regarding Claim 10, Pratt as modified is silent on the first sensor and the second sensor both are provided above the passage to sense the animal passing below the respective first and second sensors. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely shifting the location of a known elements performing the same intended function for an efficient use of space, to prevent from damage caused by the animal kicking and for more accurate sensing [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claim 8, Pratt as modified appears to teach the first point and the second point are both located at the determined position with regard to the transport direction but spaced apart from each other with a distance, wherein said distance is larger than the width of the head part, but is silent on the width being smaller than the width of the body part of an animal of a normal size to be guided through the animal passage, but is silent on explicitly teaching the spacing. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt at the time of the invention since the modification is merely a shift in location of a known element performing in the same intended function in a more confined space [*In re Japiske*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claims 4 and 5, Pratt as modified teaches measuring, wherein the determined direction is a substantially vertical direction; determined direction is a substantially vertically downward direction (Frey page 5 line 56-58).

Regarding Claim 6, Pratt as modified is silent on explicitly teaching the determined direction is a substantially horizontal direction. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Pratt at the time of the invention since the modification is merely a shift in location of parts performing the same intended function of dimensional sensing [*In re Japikse*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)] as a management measure.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 4-10 and 13-20 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The above rejection takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and the motivation for the combination is found in the prior art. Pratt teaches an automated/computerized cattle management system consisting of sensors that are used to measure dimensions and utilizing the collected data for efficient management of the herds. Frey teaches known technology and measures that can be used in any application where it is important to obtain accurate information relating to flow of objects (Frey page 4 line 13-14). Frey teaches it is known to use sensors to measure a dimension of an object and determine if that dimensional measurement is above or below a predetermined value and to count the object based on the dimensional measurement in relation to that predetermined value. It would have been obvious to one of ordinary skill in the art to modify the teachings of Pratt with the teachings of Frey at the time of the invention to obtain accurate information relating to the flow as taught by Frey. Frey teaches a known management measure. Merely shifting the location of the sensor or selecting a known alternate dimension to measure does not present a

patentably distinct limitation and is an obvious modification for one of ordinary skill in the art that would yield predictable results.

The examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art of record.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,660,147 (Col. 9 line 42-65).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/  
Primary Examiner, Art Unit 3643

16 January 2009